



**ANN H. THOMAS**  
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**MEMORANDUM**

**DATE:** September 17, 2004

**TO:** Mr. Thomas G. Shepperd, Chair, and Member of the Board of Supervisors

**FROM:** Ann H. Thomas, Commissioner of the Revenue *Ann H Thomas*

**SUBJECT:** Request for Tax Refund to Williamsburg Plantation, Inc.

As per your request, my office and I conducted a more intensive research to support the request for a refund to Williamsburg Plantation for the amount of Business License Tax paid for tax years 2001, 2002, and 2003.

My Auditor and I visited the offices at 100 Waller Mill Road and met with the Director of Marketing, the Head of Sales, and spoke with various levels of other staff to gather enough information to fully understand exactly how the process operates and determine if any sales are taking place at that location. Below is the process of a potential customer:

1. The person is contacted by telephone from telemarketers (including the Williamsburg and Grafton locations, but could be from many other locations) and a date and time is arranged for the tour. The potential buyer places a "good faith deposit" on a charge card.
2. The potential buyer reports to the Waller Mill location, where they are assigned a hotel room, and they are contacted and taken on the tour. During the tour they are offered to purchase the unit that is being built – which is located in James City County. If they agree, the contract is signed at the James City County location.
3. If they do not agree, they return to the Waller Mill location to receive their free gift and a refund of their "good faith deposit". They are approached by a sales person, one last time at the Waller Mill location. In this contact they would be offered a unit being built in James City County which they would have a deed to and be able to occupy every 3 years. If the person agrees, the contract is signed at the Waller Mill location.

I sought an informal opinion from an Assistant Attorney General. He stated constructing then selling the timeshares is classified as a contractor for business license purposes and is not real estate sales. A contractor is licensable at the definite place of

business at which the services are performed. In this case, the services are performed in James City Co.

Mr. Barnett, my Chief Deputy, Business Tax Administrator, Auditor, and I met with the County Attorney for James City County as well as their Commissioner of the Revenue and Auditor to discuss this subject. We agreed Williamsburg Plantation could be conducting three (3) different business activities; Contracting, Mortgage and financing services, and maintenance fees. Therefore I requested additional information and supporting documentation. Their Tax Manager mailed actual copies of customer's copies of Closing Statements, Deed of Trust Note, Truth-in-Lending Disclosures, and Contract for Purchase and Sale. None of these documents indicate mortgage or financing fees that were paid. It was explained the maintenance fees are charged through the Home Owner Association (HOA). This HOA is not owned by Williamsburg Plantation. The HOA sends bills through an office in Florida. Real Estate Tax is included in the annual maintenance fees, which is paid to James City County when billed.

I have sought the advice and opinion of Auditors in other jurisdictions, Commissioner's of the Revenue, researched various Codes, Opinions, and Court Cases. My Auditor and I have corresponded numerous times with their Tax Manager, and have had lengthy telephone conversations with their offices in James City County, Waller Mill location and Florida offices.

The office at Waller Mill is very active with people coming and going. It does seem to appear that business is being conducted there. However, in following the Business License Guidelines, none of their activity falls within a licensable category. I conclude that Williamsburg Plantation is entitled to the refund of Business License tax requested.

AT

copy: Mr. James "Mac" McReynolds, County Administrator  
Mr. Jim Barnett, County Attorney  
Ms. Carol White